

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6090 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

DELBERT G. COLLINS
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-225

FORMERLY BENEFIT DECISION No. 6090
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S.S.A. No.

DOUGLAS AIRCRAFT
(Employer-Appellant)

Account No.

The above-named employer on May 1, 1953, appealed from the decision of a Referee (LA-56324) which held that the claimant was entitled to benefits under the Unemployment Insurance Act (now Unemployment Insurance Code) and that the employer's account is chargeable under Section 39.1 of the Act (now sections 1030 and 1032 of the code) with respect to benefits paid to the claimant. On July 10, 1953, the Appeals Board remanded the matter to a Referee for a further hearing. Such hearing was held on August 14, 1953, at Long Beach, and the evidence adduced at that hearing is now before this Appeals Board. Briefs have been submitted by both the employer and the claimant.

Based on the record before us, our statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

The claimant was last employed for approximately 20 months as a tool crib attendant. During the latter

period of his employment, the claimant had primarily performed clerical duties of a sedentary nature. This employment terminated on January 7, 1953, under the circumstances hereinafter set forth. The claimant has prior experience as a waiter and in clerical and time-keeping work. The claimant is 55 years of age.

On January 19, 1953, the claimant registered for work and filed a claim for unemployment compensation benefits in the Long Beach office of the Department. He previously established a benefit year on November 10, 1952, in connection with a claim for unemployment compensation disability benefits under a voluntary plan. On February 13, 1953, in response to information submitted by the claimant's last employer, the Department issued a determination that the claimant was ineligible for benefits for an indefinite period commencing January 19, 1953, on the ground that he was unavailable for work within the meaning of Section 57(c) of the Act (now section 1253(c) of the code) and further determined that he was subject to disqualification for five weeks commencing January 19, 1953, on the ground that he voluntarily left his most recent work without good cause within the meaning of Section 58(a)(1) of the Act (now section 1256 of the code). In addition, the Department issued a ruling that any benefits paid to the claimant were not chargeable to the employer's account under Section 39.1 of the Act (now sections 1030 and 1032 of the code). The claimant appealed and a Referee reversed the Department's determination and ruling.

For some time prior to November 12, 1952, tension had been developing between the claimant and a fellow employee and the claimant requested that he be transferred to other work. This tension developed to the point where the claimant left his work in a highly nervous condition on November 12, 1952. The claimant was placed on sick leave for the period November 12, 1952, through November 25, 1952. Prior to the expiration of this leave, the claimant was injured in an automobile accident and his leave of absence was extended to December 22, 1952. On the expiration of his leave of absence, the claimant contacted the employer's industrial relations department relative to his return to work. The employer offered the claimant a transfer to work in another tool crib but the

claimant expressed a dislike for this type of work. Discussion with regard to possible assignments continued and the employer finally notified the claimant that he would have to accept some assignment by January 6, 1953, or he would be terminated. The claimant reported on January 6, 1953, but the matter was deferred until January 7. At that time, the tool crib job was no longer available but the claimant was offered work as either a magnetic inspector or bus boy. The claimant refused both these jobs because they involved either "pressure", which he did not think he could stand, or heavy lifting. It was then suggested to him that he resign rather than be discharged and the claimant complied with this suggestion as he was considering the possibilities of entering self-employment. Following his resignation, the claimant determined that such self-employment was not feasible and thereupon registered for work and filed his claim for benefits. As of March 19, 1953, the date of the original hearing before the Referee, the claimant was still under a physician's care for his nervous condition and would not accept any work which involved "pressure" or required lifting. In the course of the hearing, it was suggested to the claimant that he might be eligible for unemployment compensation disability benefits as he apparently was unable to perform his regular and customary work. Thereafter the claimant filed a further claim for unemployment compensation disability benefits under the voluntary plan in effect at the establishment of his last employer and was paid benefits continuously from November 12, 1952, until benefits were exhausted on or about April 30, 1953.

At all times under consideration herein, the claimant has restricted acceptable employment to work which does not involve "pressure" or heavy lifting. The claimant's search for work has been very limited and most of the employers to whom the claimant has applied could not reasonably be expected to offer him employment in view of the claimant's restrictions.

REASON FOR DECISION

Section 58 of the Act (now section 1256 of the code) provides in part as follows:

"(a) An individual shall be disqualified for benefits if:

"(i) He has left his most recent work voluntarily without good cause, if so found by the commission; . . ."

In the instant case, the claimant, following a leave of absence due to illness, was informed by the employer that he must return to work or be terminated and the claimant resigned rather than return to work in the particular jobs which the employer had available. As the employer's insistence on the claimant's termination was based entirely on his refusal to accept the work which the employer had for him, the claimant's termination was a voluntary leaving and the question is whether such leaving was with good cause (Benefit Decisions Nos. 4781, 4788 and 4847). The claimant's refusal to accept the offered employment was due to his belief that he could not satisfactorily perform the duties either due to the heavy lifting required or the "pressure" which he could not stand because of his nervous condition. That the claimant was unable to perform these duties due to a disability is substantiated by the fact that the claimant was found disabled and paid unemployment compensation disability benefits by the voluntary plan in effect at the establishment where he had been employed. Under these facts, we hold that the claimant voluntarily left his work with good cause and is not subject to disqualification under Section 58(a)(1) (now section 1256 of the code).

Section 57(c) of the Act (now section 1253(c) of the code) provides that a claimant in order to be eligible for benefits must be able to work and available for work. We have repeatedly construed this section as requiring that a claimant be in a labor market where there is a reasonable demand for his or her services, without unreasonable restrictions or limitations on acceptable work either self-imposed or created by force of circumstances so that it may be found that the claimant is genuinely in that labor market ready, willing and able to accept suitable employment (Benefit Decision No. 5015). In the instant case, although the claimant is willing to accept any work which he feels he is able to perform, his nervous condition prevents him from accepting employment which involves "pressure." In addition, he is unable to accept any employment which requires lifting and his search for work has been very limited. Under these facts, we do not believe that the

claimant is able to work and available for work as required by Section 57(c) of the Act (now section 1253(c) of the code) and this conclusion is strengthened by the fact that the claimant has been found disabled by the voluntary plan insurer at the establishment where he was last employed.

DECISION

The decision of the Referee is modified. The claimant is ineligible for benefits under Section 57(c) of the Act (now section 1253(c) of the code). The claimant is not subject to disqualification under Section 58(a)(1) of the Act (now section 1256 of the code) and the employer's account is chargeable under Section 39.1 of the Act (now sections 1030 and 1032 of the code) with respect to benefits paid to the claimant.

Sacramento, California, December 4, 1953.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6090 is hereby designated as Precedent Decision No. P-B-225.

Sacramento, California, February 9, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BREWETT, Chairperson

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HARRY K. GRAFE

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